

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

PEGGY R. BEARDSLEE

Claimant

VS.

MEDICALODGES

Respondent

AND

TRAVELERS PROPERTY & CAS. CO.

Insurance Carrier

Docket No. **1,046,649**

ORDER

Claimant requests review of the November 18, 2009 preliminary hearing Order entered by Administrative Law Judge Rebecca A. Sanders.

ISSUES

At the preliminary hearing the claimant requested that Dr. Joseph Sankoorikal be designated the authorized treating physician. Claimant, at her attorney's suggestion, had seen Dr. Sankoorikal and she further requested that medical mileage expenses for that visit and Dr. Sankoorikal's medical bill be paid as authorized medical.

The Administrative Law Judge (ALJ) denied claimant's request to change the authorized treating physician from Dr. Eustaquio Abay to Dr. Sankoorikal. The ALJ further denied the claimant's request for payment of medical mileage expenses as well as the remainder of Dr. Sankoorikal's medical bill.

Claimant requests review of whether the ALJ erred in denying claimant's request for change of physician.

Respondent argues the Board does not have jurisdiction pursuant to K.S.A. 44-534a(a)(2) and therefore the ALJ's Order should be affirmed.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, this Board Member makes the following findings of fact and conclusions of law:

There was no dispute regarding the compensability of the claim. The only issue raised before the ALJ was claimant's request to change the authorized treating physician. This is an appeal from the ALJ's denial of claimant's request for a change of treating physician.

This Board Member agrees with the respondent and concludes, at this juncture of the proceeding, the Board does not have jurisdiction to review this preliminary hearing order.

The Board's jurisdiction to review preliminary hearing issues and findings is generally limited to the following:

- (1) Did the worker sustain an accidental injury?
- (2) Did the injury arise out of and in the course of employment?
- (3) Did the worker provide timely notice and timely written claim?
- (4) Is there any defense to the compensability of the claim?¹

Additionally, the Board may review any preliminary hearing order where a judge exceeds his or her jurisdiction.² Jurisdiction is generally defined as authority to make inquiry and decision regarding a particular matter. The jurisdiction and authority of a court to enter upon inquiry and make a decision is not limited to deciding a case rightly but includes the power to decide it wrongly. The test of jurisdiction is not a correct decision but the right to enter upon inquiry and make a decision.³

The Board has on other occasions determined that a request to change the authorized treating physician is about or concerns the furnishing of medical treatment. The preliminary hearing statute found at K.S.A. 44-534a gives the ALJ authority to grant or deny the request for medical compensation pending a full hearing on the claim. Thus, the ALJ did not exceed her jurisdiction and the Board does not have jurisdiction to review the Judge's preliminary Order.

¹ K.S.A. 44-534a.

² K.S.A. 44-551.

³ See *Taber v. Taber*, 213 Kan. 453, 516 P.2d 987 (1973); *Provance v. Shawnee Mission U.S.D.* No. 512, 235 Kan. 927, 683, P.2d 902 (1984).

By statute, the above preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.⁴ Moreover, this review of a preliminary hearing Order has been determined by only one Board Member, as permitted by K.S.A. 2008 Supp. 44-551(i)(2)(A), as opposed to being determined by the entire Board when the appeal is from a final order.⁵

WHEREFORE, it is the finding of this Board Member that the Order of Administrative Law Judge Rebecca A. Sanders dated November 18, 2009, is affirmed.

IT IS SO ORDERED.

Dated this 29th day of January 2010.

HONORABLE DAVID A. SHUFELT
BOARD MEMBER

c: John J. Bryan, Attorney for Claimant
Christina R. Madrigal, Attorney for Respondent and its Insurance Carrier
Rebecca A. Sanders, Administrative Law Judge

⁴ K.S.A. 44-534a.

⁵ K.S.A. 2008 Supp. 44-555c(k).